

REMARKS

Claims 1-20 were pending in the application. Claims 6 and 16 were canceled. Claim 1 is an independent claim, and claims 2-5 and 7-10 depend there from. Claim 11 is an independent claim, and claims 12-15 and 17-19 depend there from. Claim 20 is an independent claim. Claims 1, 11 and 20 are currently amended. Applicants respectfully request that the application be reconsidered in view of the amendments set forth above and the following remarks.

In point 3 on page 2 of the Office Action, independent claims 1, 11, and 20, and dependent claims 2-5, 7-10, 12-15 and 17-19 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sedaros (U.S. Patent 6,004,259). The Applicants respectfully traverse the rejections for at least the reasons set forth below.

With regard to the anticipation rejections, MPEP 2131 states that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). MPEP 2131 also states that “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The Applicants set forth in independent claim 1 a method for soothing or calming a child. The method may comprise, among other things, “determining from within said audio enabled toy, a playback operating mode from a plurality of playback operating modes based on said received triggering event, wherein said plurality of playback operating modes are not a standby mode or an off mode” and “selecting by said audio enabled toy, at least one sound that mimics a mother’s sound from a plurality of mother’s sounds based on said determined playback operating mode.”

Sedaros is different from the Applicants’ independent claim 1. Sedaros at least fails to disclose “determining from within said audio enabled toy, a playback operating mode from a plurality of playback operating modes based on said received triggering event, wherein said plurality of playback operating modes are not a standby mode or an off mode” as well as “selecting by said audio enabled toy, at least one sound that mimics a mother’s sound from a

plurality of mother's sounds based on said determined playback operating mode," as set forth in Applicants' amended independent claim 1.

In point 3 on page 2 of the Final Office Action, the Examiner stated that "[w]ith respect to claims 1 and 2, Sedaros teaches a doll, or 'toy' (col. 1 lines 34-37), that may receive a 'triggering event' such as the crying of a baby and subsequently generates a sound and plays sounds of the mother to induce a calming effect on the child (col. 1, lines 56-61)." The Final Office Action fails to point out where in Sedaros the method steps of "determining from within said audio enabled toy, a playback operating mode from a plurality of playback operating modes based on said received triggering event, wherein said plurality of playback operating modes are not a standby mode or an off mode" and "selecting by said audio enabled toy, at least one sound that mimics a mother's sound from a plurality of mother's sounds based on said determined playback operating mode" are disclosed. Because the Final Office Action has failed to show "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" as required for an anticipation rejection under MPEP 2131, the rejections under 35 U.S.C. § 102(b) cannot be maintained.

Further, in point 4 on page 4 of the Final Office Action, the Examiner states that "[a] 'playback operating mode' can be interpreted as any mode enabling functioning of the device such as powering on or off the device." The Applicants respectfully disagree. If the device is powered off, the device is not playing anything back and thus cannot be "operating." Similarly, if the device is in "standby mode" awaiting noise above a trigger level to playback, the device is not playing anything back and thus cannot be "operating." Therefore, the Applicants respectfully assert that the "off mode" and "standby mode" in Sedaros is not a "playback operating mode" because Sedaros only discloses a single playback operating mode, namely "playing back the heartbeat recorded earlier by the mother." (Column 1, Lines 41-42). To further clarify that a "playback operating mode" is not an "off mode" or "standby mode," the Applicants have amended claim 1 to add "wherein said plurality of playback operating modes are not a standby mode or an off mode."

Additionally, point 4 on page 5 of the Final Office Action states the following:

Moreover, Applicant contends that Sedaros fails to teach a playback operating mode from one of a plurality of playback operating modes, however this argument is not found persuasive since the claim language of claim 1 does not provide for a *plurality* of playback modes, but “a playback operating mode” (refer to lines 4 and 7 of claim 1 of the instant application).

(Final Office Action, Page 5, Lines 5-9). The dictionary definition of “determine” is “to settle or decide by choice of alternatives or possibilities.” (Merriam-Webster Online Dictionary). Sedaros fails to teach or suggest “**determining**...a playback operating mode.” Rather, Sedaros discloses **a single operating mode**, namely “playing back the heartbeat, recorded earlier by the mother.” (Column 1, Lines 41-42). Because Sedaros discloses **a single operating mode**, “**determining** a playback operating mode” is not possible in Sedaros. To further clarify that “determining” means to decide by choice of alternatives, the Applicants have amended claim 1 to add “from a plurality of playback operating modes.”

Point 4 on page 5 of the Final Office Action states the following:

Applicant further contends that Sedaros fails to disclose “selecting by audio enabled toy, at least one sound that mimics a mother’s sounds.” This argument is not persuasive because claim 1 at line 8 only requires ‘an audio signal representing at least one sound,’ that being interpreted as the sounds of a mother to induce calming effects (col. 1, lines 56-61) as disclosed by Sedaros.

(Final Office Action, Page 5, Lines 1-5). The dictionary definition of “select” is “chosen from a number or group by fitness or preference.” (Merriam-Webster Online Dictionary). Sedaros fails to teach or suggest **selecting** a sound based on the determined playback operating mode. Rather, Sedaros simply plays back whatever sound has been recorded for the single operating mode, **without using any selection**. (See Sedaros, Column 1, Lines 41-42). To further clarify that “selecting” means to choose from a group, the Applicants have amended claim 1 to add “from a plurality of mother’s sounds.”

For at least the reasons set forth above, the Applicants respectfully assert that claim 1 is allowable over Sedaros. The Applicants request that the rejection of claim 1 be withdrawn.

Because dependent claims 2-5 and 7-10 depend, directly or indirectly, from independent claim 1, and because claim 1 is allowable over Sedaros, the Applicants assert that rejections of dependent claims 2-5 and 7-10 are now moot. The Applicants assert that claims 2-5 and 7-10 are also allowable over Sedaros and requests that the rejections of claims 2-5 and 7-10 be withdrawn.

The Applicants set forth in independent claim 11 a system embodied in a toy for soothing or calming a child. The system may comprise, among other things, “said processing circuit determines a playback operating mode from a plurality of playback operating modes based on said received triggering event and selects from within said audio enabled toy, at least one sound that mimics a mother’s sound from a plurality of mother’s sounds based on said determined playback operating mode, wherein said plurality of playback operating modes are not a standby mode or an off mode.”

Sedaros is different from the Applicants’ independent claim 11. Sedaros at least fails to disclose “said processing circuit determines a playback operating mode from a plurality of playback operating modes based on said received triggering event... wherein said plurality of playback operating modes are not a standby mode or an off mode” as well as “said processing circuit ... selects from within said audio enabled toy, at least one sound that mimics a mother’s sound from a plurality of mother’s sounds based on said determined playback operating mode” as set forth in Applicants’ amended claim 11.

The second full paragraph on page 3 of the Final Office Action states that “[w]ith reference to claims 11 and 12, the device of Sedaros contains a processing circuit that receives the ‘triggering event’ from the child’s voice and controls playback of a sound pre-recorded by the mother (col. 2, lines 21-23) and further comprises an audio output to generate the sound (col. 3, lines 6-10).” The Final Office Action fails to point out where in Sedaros the claimed elements of “said processing circuit determines a playback operating mode from a plurality of playback operating modes based on said received triggering event and selects from within said audio enabled toy, at least one sound that mimics a mother’s sound from a plurality of mother’s sounds based on said determined playback operating mode, wherein said plurality of playback operating

modes are not a standby mode or an off mode” are disclosed. Because the Final Office Action has failed to show “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” as required for an anticipation rejection under MPEP 2131, the rejections under 35 U.S.C. § 102(b) cannot be maintained.

As mentioned above, point 4 on page 4 of the Final Office Action states that “[a] ‘playback operating mode’ can be interpreted as any mode enabling functioning of the device such as powering on or off the device.” The Applicants respectfully disagree. If the device is powered off, the device is not playing anything back and thus cannot be “operating.” Similarly, if the device is in “standby mode” awaiting noise above a trigger level to playback, the device is not playing anything back and thus cannot be “operating.” Therefore, the Applicants respectfully assert that the “off mode” and “standby mode” in Sedaros is not a “playback operating mode” because Sedaros only discloses a single playback operating mode, namely “playing back the heartbeat recorded earlier by the mother.” (Column 1, Lines 41-42). To further clarify that a “playback operating mode” is not an “off mode” or “standby mode,” the Applicants have amended claim 11 to add “wherein said plurality of playback operating modes are not a standby mode or an off mode.”

Additionally, as addressed above, Sedaros fails to teach or suggest a processing circuit that **determines** a playback operating mode. Rather, Sedaros discloses **a single operating mode**, namely “playing back the heartbeat, recorded earlier by the mother.” (Column 1, Lines 41-42). Because Sedaros discloses **a single operating mode**, it is not possible in Sedaros to “**determines** a playback operating mode.” To further clarify that “determines” means to decide by choice of alternatives, the Applicants have amended claim 11 to add “from a plurality of playback operating modes.”

Further, Sedaros fails to teach or suggest a processing circuit that “**selects** from within said audio enabled toy, at least one sound that mimics a mother’s sound from a plurality of mother’s sounds based on said determined playback operating mode.” Rather, Sedaros simply plays back whatever sound has been recorded for the single operating mode, **without using any selection**. (See Sedaros, Column 1, Lines 41-42). To further clarify that “selecting” means to

choose from a group, the Applicants have amended claim 11 to add “from a plurality of mother’s sounds.”

The first full paragraph on page 5 of the Final Office Action states that “a processing circuit, or trigger circuit, as taught by Sedaros (see Fig. 1D) functions to ‘select’ a sound mimicking a mother’s sounds.” However, nothing in Sedaros’s Fig. 1D nor Sedaros’s specification teaches or suggests the Sedaros trigger circuit “selects from within said audio enabled toy, at least one sound that mimics a mother’s sound....” Rather, Sedaros states that “FIG. 1d, is a self explanatory block diagram combining all FIGS. 1a, 1b and 1c.” (Col. 3, Lines 11-12). Nowhere in Sedaros’s disclosure of FIGS. 1a, 1b and 1c is there any teaching or suggestion that the Sedaros trigger circuit “selects from within said audio enabled toy, at least one sound that mimics a mother’s sound....”

For at least the reasons set forth above, the Applicants respectfully assert that claim 11 is allowable over Sedaros. The Applicants request that the rejection of claim 11 be withdrawn.

Because dependent claims 12-15 and 17-19 depend, directly or indirectly, from independent claim 11, and because claim 11 is allowable over Sedaros, the Applicants assert that rejections of dependent claims 12-15 and 17-19 are now moot. The Applicants assert that claims 12-15 and 17-19 are also allowable over Sedaros and requests that the rejections of claims 12-15 and 17-19 be withdrawn.

The Applicants set forth in independent claim 20 a system embodied in a toy for soothing and calming a child. The system may comprise, among other things, “a mode control unit coupled to said processing circuit for determining a playback operating mode from a plurality of playback operating modes, wherein said plurality of playback operating modes are not a standby mode or an off mode.”

Sedaros is different from the Applicants’ independent claim 20. Sedaros at least fails to disclose “a mode control unit coupled to said processing circuit for determining a playback operating mode from a plurality of playback operating modes, wherein said plurality of playback operating modes are not a standby mode or an off mode” as set forth in Applicants’ claim 20.

The second full paragraph on page 4 of the Final Office Action states that “[w]ith reference to claims 20, the device of Sedaros comprises a switch coupled to the processing circuit for mode operation (col. 2, lines 45-49); a timer (col. 2, lines 33-34) and a volume control (col. 3, lines 6-10); an audio output and speaker for generating the mother’s pre-recorded sounds (col. 3, lines 1-10) and a microphone for recording the sounds (col. 3, lines 25-30) stored in memory (col. 1, lines 8-13).” The Final Office Action fails to point out where in Sedaros the claimed elements of “a mode control unit coupled to said processing circuit for determining a playback operating mode from a plurality of playback operating modes, wherein said plurality of playback operating modes are not a standby mode or an off mode” are disclosed. Because the Final Office Action has failed to show “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” as required for an anticipation rejection under MPEP 2131, the rejections under 35 U.S.C. § 102(b) cannot be maintained.

As mentioned above, in point 4 on page 4 of the Final Office Action, the Examiner states that “[a] ‘playback operating mode’ can be interpreted as any mode enabling functioning of the device such as powering on or off the device.” The Applicants respectfully disagree. If the device is powered off, the device is not playing anything back and thus cannot be “operating.” Similarly, if the device is in “standby mode” awaiting noise above a trigger level to playback, the device is not playing anything back and thus cannot be “operating.” Therefore, the Applicants respectfully assert that the “off mode” and “standby mode” in Sedaros is not a “playback operating mode” because Sedaros only discloses a single playback operating mode, namely “playing back the heartbeat recorded earlier by the mother.” (Column 1, Lines 41-42). To further clarify that a “playback operating mode” is not an “off mode” or “standby mode,” the Applicants have amended claim 20 to add “wherein said playback operating mode is not a standby mode or an off mode.”

Additionally, as addressed above, Sedaros fails to teach or suggest “a mode control unit coupled to said processing circuit for **determining** a playback operating mode.” Rather, Sedaros discloses **a single operating mode**, namely “playing back the heartbeat, recorded earlier by the mother.” (Column 1, Lines 41-42). Because Sedaros discloses **a single operating mode**,

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In reply to Final Office Action of Jan 24, 2007

determining a playback operating mode” is not possible in Sedaros. To further clarify that “determining” means to decide by choice of alternatives, the Applicants have amended claim 20 to add “from a plurality of playback operating modes.”

For at least the reasons set forth above, the Applicants respectfully assert that claim 20 is allowable over Sedaros. The Applicants request that the rejection of claim 20 be withdrawn.

Applicants reserve the right to argue additional reasons supporting the allowability of claims 1-20 should the need arise in the future.

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CONCLUSION

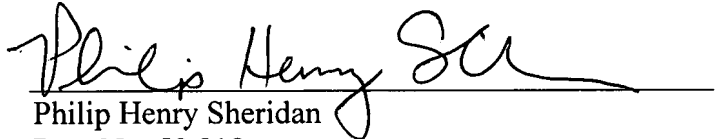
Based on at least the foregoing, Applicants believe that claims 1-20 are in condition for allowance.

The Commissioner is hereby authorized to charge additional fee(s) or credit overpayment(s) to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

A Notice of Allowance is courteously solicited.

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Respectfully submitted,


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